

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

<div>In re:</div> <div>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</div> <div>as representative of</div> <div>THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i>,</div> <div>Debtors.¹</div>	<div>PROMESA Title III</div> <div>No. 17 BK 3283-LTS</div> <div>Re: ECF No. 4011, 4098 and 4194</div> <div>(Jointly Administered)</div>
<div>In re:</div> <div>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representative of</div> <div>EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO (“ERS”),</div> <div>Debtor.</div>	<div>PROMESA Title III</div> <div>No. 17 BK 3566-LTS</div> <div>This Motion relates to ERS and shall be filed in Lead Case No. 17 BK 3283-LTS and Case No. 17 BK 3566-LTS.</div>
<div>COOPERATIVA DE AHORRO Y CRÉDITO VEGABAJEÑA</div> <div>Movant,</div> <div>v.</div> <div>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO, as representative of</div> <div>EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT OF THE COMMONWEALTH OF PUERTO RICO (“ERS”),</div> <div>Respondent.</div>	

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

**INFORMATIVE MOTION IN SUPPORT OF THE EMPLOYEES RETIREMENT
SYSTEM OF THE GOVERNMENT OF PUERTO RICO’S OBJECTION TO MOTION
FOR LIFT OF STAY FILED BY THE COOPERATIVA DE AHORRO Y CRÉDITO
VEGABAJEÑA AND IN COMPLIANCE WITH ORDER [ECF NO. 4194]**

The Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”), on behalf of the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”), pursuant to the authority granted to it under the *Enabling Act of the Fiscal Agency and Financial Advisory Authority*, Act 2-2017, respectfully submits the declaration of Luis M. Collazo-Rodríguez, Administrator of ERS and Executive Director of the Retirement Board of the Government of Puerto Rico (the “Retirement Board”), attached hereto as Exhibit 1, in support of ERS’s objection to the Cooperativa de Ahorro y Crédito Vegabajeña’s motion for relief from the automatic stay.

1. At the most recent omnibus hearing in the above-captioned Title III cases, the Court instructed ERS to provide information as to whether ERS had been historically required to hold employee retirement contributions in segregated accounts, and if so, whether such requirements had been met. *See* Hrg. Tr. 61–62 (Nov. 7, 2018). As demonstrated in Administrator Collazo-Rodríguez’s declaration, historically, employee contributions to ERS were *not* required to be held in individual segregated accounts, but rather, when such contributions were made, they were pooled together with existing assets of ERS and used to make benefit payments to retirees. *See* Ex. 1, ¶¶ 7–8. Put differently, while ERS maintained individual accounts for accounting purposes that reflected the notional value of each employee’s contributions and accredited investment earnings, no segregated funds corresponding to such retirement accounts existed or were maintained by ERS. This was made clear in numerous ERS and Commonwealth of Puerto Rico

public disclosures. *See id.* ¶¶ 9–10.²

2. The Collazo-Rodríguez declaration details the historical treatment of employee contributions to Puerto Rico’s employee retirement systems and the public pension crisis in Puerto Rico. The lack of individual segregated accounts, as well as chronic underfunding of pensions were a key contributor to this crisis.

3. The Collazo-Rodríguez declaration describes reforms implemented by the Rosselló Administration through enactment of Act 106 of August 23, 2017 (“Act 106-2017”) including steps to specifically address the lack of segregated individual accounts to fund employees’ retirement. When the Rosselló Administration came into office, it took steps to address the public pension crisis and safeguard public employees’ retirement benefits. Faced with the “imminent insolvency” of the retirement systems, the Commonwealth government has assumed responsibility to pay retirement benefits from the General Fund, guarantying that retirees will continue to receive the benefits they earned by devoting “their best years to the service of the People of Puerto Rico.” Act 106-2017, Statement of Legislative Intent.

4. Additionally, to further safeguard employee funds, Act 106-2017 for the first time mandated the creation of individual retirement accounts backed by segregated funds held in trust for each current employee. *See* Ex. 1, ¶ 19. This contrasted with prior retirement regimes, which created notional savings accounts that existed only for accounting purposes, but did not ensure that specific funds contributed by employees are segregated to fund their own retirement benefits. Act 106-2017, on the other hand, mandated a defined contribution system where each employee will contribute to retirement accounts that will be segregated and held in trust for their benefit. *See id.*

² Neither AAFAF nor ERS take any position with respect to the rights of ERS participants and retirees in their contributions and retirement benefits. Nothing herein should be deemed or construed as taking a position regarding the rights of ERS participants and retirees. AAFAF and ERS reserve all rights with respect to such issues.

The new defined contribution system will ensure that upon retirement each employee will receive the value of his or her contributions and investment earnings thereon.

5. The Commonwealth government is in the process of establishing the individual accounts mandated by Act 106-2017. A qualified, experienced private sector entity will manage the defined contribution plan. *Id.* ¶ 20. The newly established Retirement Board has published a Request for Proposal for such an entity to undertake “the implementation, administration and management of the newly created Defined Contribution Plan for government employees.” *Id.*

6. Until this Request for Proposal is fulfilled and consummated, the Department of Treasury of Puerto Rico (“Treasury”) has been collecting and holding employee contributions in a segregated account completely separate from Treasury’s general funds. *Id.* ¶ 21. As of September 28, 2018, the segregated account consisting of employee retirement contributions at Treasury had a balance of \$321.3 million, which represents an increase from \$301.3 million as of August 31, 2018. *See id.*

7. Once the individual accounts are established, Treasury will transfer all employee contributions made since July 1, 2017 to the appropriate segregated trust account. *Id.* ¶ 22. In the meantime, employees can contact ERS to receive an accounting of their contributions. *Id.*

8. In sum, the Rosselló Administration has taken critical first steps to move beyond the failed efforts at reform in the past and remedy the systemic underfunding that has plagued Puerto Rico’s retirement systems. Through these actions, including the enactment of Act 106-2017, the Rosselló Administration has kept its “indispensable commitment” to retirees while guarantying that current and future public servants will also be able to “enjoy a dignified retirement.” Act 106-2017, Statement of Legislative Intent.

Dated: November 15, 2018

Respectfully submitted,

/s/ Luis C. Marini-Biaggi

Luis C. Marini-Biaggi
USDC No. 222301
Email: lmarini@mpmlawpr.com

/s/ Carolina Velaz-Rivero

Carolina Velaz-Rivero
USDC No. 300913
Email: cvelaz@mpmlawpr.com

MARINI PIETRANTONI MUÑIZ LLC
MCS Plaza, Suite 500
255 Ponce de León Ave.
San Juan, Puerto Rico 00917
Tel: (787) 705-2171
Fax: (787) 936-7494

*Attorneys for the Puerto Rico Fiscal Agency and
Financial Advisory Authority*

EXHIBIT 1